SPEECH

OF

HON. S. BRENTON, OF INDIANA,

ON THE

RESOLUTION REPORTED BY THE COMMITTEE OF ELECTIONS IN THE CONTESTED-ELECTION CASE FROM THE TERRITORY OF KANSAS.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MARCH 20, 1856.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1856.

KANSAS CONTESTED ELECTION.

Mr. BRENTON said: Mr. Chairman, more than two weeks have passed since I obtained the floor for the purpose of submitting some remarks to the committee. During that time a debate of no ordinary character has engrossed the attention of the House and the country; and I am satisfied that this day is the most unfavorable one which could be selected to obtain a calm and patient hearing on any subject. Notwithstanding this, I design to submit a few remarks, in reference to some of the topics discussed by the President in his annual message, and which is now before the committee.

The President, after a very brief "review of the general state of the Union, including such particular concerns of the Federal Government" as appeared to him most "desirable and useful to bring to the notice of Congress," impliedly, at least, assumes that the members of the present Congress are in a state of ignorance as to the true constitutional powers of the Government, and consequently of their own powers. He, therefore, proceeds to give them a very solemn and learned lecture upon the subject; and labors especially to enlighten them in reference to the original design of the framers of the Constitution, the equality of the States, and the end to be accomplished by the formation of the General Government. And that end, according to my reading and interpretation of his language, was chiefly the extension, support, and protection of the domestic institutions of one portion of the people of this Confederacy, by which they are distinguished from the other. Or, in the language of one of his most able supporters, the message endeavors "to show that Congress has no power to limit, restrain, or in any manner to impair slavery; but, on the contrary, it is bound to protect and maintain it," not only "in the States where it exists," but "wherever its flag floats and its jurisdiction is paramount."

Mr. Chairman, to those of us who have been accustomed to look upon the American flag as it floats proudly over the plains of Lexington and Concord, and on the heights of Bunker's Hill, or over the hundred battle-fields of the West, and who have been taught to believe that it proclaimed death to the tyrant and liberty to the captive, it is a strange and startling announcement to hear it proclaimed in the very cradle of freedom, that this banner is unfurled to the breeze to serve as a guide to the despot, and as a pledge of protection to the oppressor of his brethren. Such a sentiment I hold to be a libel on the memory of the patriotic fathers of our glorious Republic.

Dismissing this subject, the President proceeds to lecture us on the history and progress of slavery; and notwithstanding the fact that he stands pledged before the whole country to discountenance and discourage all agitation of the slavery question, "either in Congress or out of it," he opens up the whole subject, from the foundation of the Government to the present day, and attempts to meet what he calls the "inflammatory charges of political agitators," by an appeal to "the voice of history," and "the principles and facts of the political organization of the new Territories of the United States;" and thus becomes the very chief of agitators.

There may be an excuse for this, found in the fact that the "presidential mansion" may be regarded as a kind of middle ground, or half-way house, not being exactly "in Congress nor out of it;" and therefore his pledges did not embrace that locality.

In his attempts to discuss the constitutional relations of slavery, I regret to find that the President, forgetful of the dignity of his position, has shown an intimate acquaintance with all the catchwords and cant phrases of the low demagogue: and by their use attempts to excite prejudice against all those in every section of the country, who contend for the principles of freedom contained in the Declaration of Independence and the Constitution. They are held up to the world as "sectional agitators," carried away by the "passionate rage of fanaticism," and impelled by a "fanatical devotion to the interests of a few Africans" and "the zeal of social propagandism." Such language will no doubt give a popular relish

to his arguments in some sections of the country and among certain classes of his followers.

In this connection the President charges all the citizens of the United States who hold a different opinion, and reject his conclusions, with enmity to the Constitution and laws of the country.

Upon this charge they are arraigned, tried, and convicted of offenses, which he asserts "would be cause of war as between foreign Powers, and only fail to be such in our system because perpetrated under cover of the Union."

In behalf of my own constituents, I ask the privilege of filing a bill of exceptions, and appeal from this judgment to a higher tribunal—the sovereign power of the people, to be expressed through the ballot-box.

Mr. Chairman, I design calling the attention of the committee particularly to the position assumed by the President in the following paragraph, which is made the foundation of an extended argument, designed to prove that Congress has no power to prohibit slavery in the Territories. He says:

"The ordinance for the government of the Territory northwest of the river Ohio, had contained a provision which prohibited the use of servile labor therein, subject to the condition of the extradition of fugitives from service due in any other part of the United States. Subsequently to the adoption of the Constitution, this provision ceased to remain as a law; for its operation as such was absolutely superseded by the Constitution."

This declaration, to say the least of it, possesses the character of novelty. I am aware that some statesmen in former times entertained and expressed doubts as to the binding force of this ordinance after the adoption of the Constitution, for the reason that they supposed some of its provisions were inconsistent with the principles of that instrument. But it is not within my recollection at the present time that any of them have ever taken the ground that it "was absolutely superseded by the Constitution," and therefore void. In all the debates and discussions of modern times, by the most able and renowned statesmen of any age or country, I do not find that any of them ever assumed such a position; but, on the contrary, it has been maintained, executed, and carried out in all its provisions.

Mr. Chairman, I ask the indulgence of the committee while I briefly give my reasons for disagreeing entirely with his Excellency, and of presenting such proof as I may have at my command to show the incorrectness of his conclusion. And I must be permitted to express a fear that, in his zeal to serve a particular interest, to obtain favor in a certain quarter, and to place in a false position the largest portion of the people of this country, he has either forgotten or overlooked the facts of history and the legislation of the country. If the President is right, then the legislation of the past has been and was wrong; the statesmen of the past, for more than fifty years, were guided by a false theory and an obsolete ordinance; and a vast portion of the people of the United States have been deluded, and continued to live and act in ignorance of what is now claimed to be their rights and privileges as citizens under the Constitution. If the President is right, then the citizens of the slaveholding States have been cheated out of, and failed to avail themselves of, the fairest opportunity ever afforded in the history of this Government for the extension of their "peculiar institution;" and their failure, resulting from an ignorance of the law of the land, has happily proved to be the salvation of the Northwest Territory from the blighting curse of human bondage. But for this ignorance the fairest portion of this green earth—a vast extent of country whose hills and dales, broad prairies and dense forests, fertility of soil and salubrity of clime, variegated scenery and natural advantages are not surpassed, if equaled, by any other portion of God's footstool—would to-day be cultivated by "servile labor."

The President is not, however, without a modern precedent—especially if the dictum of one man, high in authority and learned in the law, can be regarded as a safe precedent. I find, in the Washington Union of November 2, 1855, the following, purporting to be the opinion of the present Attorney General on this subject. He says:

"It has been adjudged, by a long series of decisions of the Supreme Court, that the United States never held any municipal sovereignty, jurisdiction, or right of soil in the territory of which any of the new States are formed, except for temporary purposes, namely: to execute the trusts created by deeds of cession of Virginia, Massachusetts, Georgia, and other States in the original common territory of the Union, or by treaties with France, Spain, and the Mexican Republic, in the territories of Louisiana, the Floridas, New Mexico, and California.

"It has been adjudged by the same series of decisions that the provisions of the ordinance for the organization of the Northwest Territory were extinguished by the Constitution; or, if any of them retain continuing validity, it is only so far as they may have authority derived from some other source—either the compacts of cession or acts of Congress under the Constitution."

If such decisions have been made, it has not been my good fortune to find them. When were these decisions made? By whom? And in what case or cases? These questions are easily answered if it be true that "a long series of decisions" have been made by "the Supreme Court of the United States." And it is due to the cause which the opinions of the President and Attorney General are designed to sustain, and also to the country generally, that some portion of this "*long series*" be brought to light.

This ordinance was unquestionably known to the convention which formed the Constitution, and the subjects embraced in it were undoubtedly carefully and earnestly examined by that body in all their bearings. Is it not reasonable, then, to suppose that if they had found in it anything inconsistent with the equality of the States and the principles of a republican government, they would have said so, and have repealed it in express terms, and not left it for future adjudications by the courts of the country?

Now, sir, it is a principle well established, and understood by all, that when a law is "superseded" by subsequent enactment, or expires by express limitation, it is void and inoperative; and that when the conditions of any writing obligatory are fully complied with, it ceases to have any force or effect, either in law or equity. Now, as

the Constitution contains no provisions for the government of the Northwest Territory, it follows as a natural consequence, according to the teachings of the President and Attorney General, that it had no organic law; the officers were "superseded" and the government "extinguished." Is this true?

As this question lies at the very foundation of the controversy now agitating the whole country, it is important to understand the facts of the case; and this can only be done by ascertaining how the question was treated by the Congress of the nation, and how it was understood by the statesmen of that day.

That the President is wrong, I think can be clearly shown by the "voice of history," by the legislation of the country, and the opinion of the statesmen of this day. No persons living within the limits of that vast Territory regarded themselves as released from the binding force of any part of that ordinance; so far from it, we find the Governor and Legislative Council continuing to act under it. They believed that they were specially bound by the sixth article of that ordinance, which prohibited slavery in the Territory. Hence we find the Legislative Council, with many of the citizens of the Territory of Indiana, sending their memorials and petitions to Congress, asking for a temporary suspension of the sixth article, so as to allow, for a limited period, the introduction of slave labor.

On the 25th of April, 1796, this subject was presented to the House, and referred to a special committee; on the 12th of May following, this committee made a report against the prayer of the petitioners.

On the 8th of February, 1803, memorials and petitions on the same subject were again presented to the House, and referred to a committee; and, on the 2d of March following, Mr. Randolph, chairman of the committee, reported as follows:

"That the committee deem it highly *dangerous* and *inexpedient* to impair a provision *wisely* calculated to promote the *happiness* and *prosperity* of the northwestern country, and to give *strength* and *security* to that extensive frontier. In the *salutary* operation of this *sagacious* and *benevolent restraint* it is believed that the inhabitants of Indiana will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration."

Now mark. This ordinance is here pronounced (and very appropriately) a *wise* one, and characterized as a "sagacious and benevolent restraint," and in its operations and beneficial effects as "calculated to promote the happiness and prosperity of the northwestern country," and that any attempt "to impair" it, would be, not only "inexpedient," but "highly dangerous." As an Indianian, I feel devoutly grateful to the memory of the man who lent his commanding influence in the early days of our Republic to maintain inviolate the solemn compact of our fathers in favor of the cause of human freedom. And it is under the benign influence of this "sagacious and benevolent restraint" that Indiana has risen so rapidly, and in so short a time, to the high position she occupies as a member of this mighty Confederacy. It is to this ordinance chiefly, that her people are indebted for their wealth, their intelligence, and commanding virtues. Is it then to become a matter of wonder or astonishment that her people, thus educated and elevated, should ardently desire to see the residue of the territory of the West consecrated to freedom? or that they should feel a fixed determination to use all constitutional and lawful means to prevent the extension of slavery? But this question continued to be urged upon the attention of Congress, and reports were subsequently made for and against it. In November, 1807, the whole matter was finally disposed of in both Houses of Congress. A memorial from the Territorial Legislature, with an able remonstrance from the citizens of Clark county, were referred, on the 7th of November, to a special committee of the Senate. Six days after, Mr. Franklin, a Senator from North Carolina, chairman of the committee, reported as follows:

"*Resolved*, That it is not expedient, at this time, to suspend the sixth article of the compact for the government of the Territory of the United States northwest of the river Ohio."

This report was concurred in by the Senate on the 17th day of November, and on the same day, a similar report was made in the House; and here the matter rested. Thus, sir, I have briefly traced the history of the movements of the people on this question, so far as the citizens of my own State were concerned.

Mr. Chairman, how much time, trouble, and anxiety, as well as bitter feeling and excitement, might have been avoided, in Congress and out of it, if this new interpretation had obtained, and been understood in that day.

The various committees of the Senate and House, instead of discussing the question and making elaborate reports for and against the prayers of the memorialists, might have settled the whole controversy by simply informing those interested that the sixth article of the ordinance had "ceased to remain a law;" [illegible] operation as such was absolutely [illegible] by the Constitution," that all its "provisions were extinguished;" and therefore they were at liberty to introduce servile labor into the Territory, and hold slaves at their pleasure.

But let us now examine the history of this question a little further in connection with the positive legislation of the country; and see whether any Congress has ever regarded the ordinance in any of its parts as either "superseded" or "extinguished by the Constitution." And here I assert that every act of Congress under the Constitution, relating to the division and organization of the different parts of the Northwestern Territory, recognized the existence of this ordinance and enforced its provisions. To sustain this position, I call the attention of the committee to the following proviso in the act authorizing the people of Ohio to form a constitution and State government, approved April 30, 1802. It is as follows:

"That the same shall be republican, and *not repugnant to the ordinance* of the 13th of July, 1787, between the original States and the people and *States* of the territory northwest of the river Ohio."

Further, in the act of April 16, 1816, preparatory to the admission of Indiana into the Union,

Congress declares, that the Government "shall be republican, and *not repugnant to those articles of the ordinance of the 13th of July*, 1787, *which are declared to be irrevocable* between the original States and the people and *States* of the territory northwest of the river Ohio."

Again, as late as 1836, I find Congress using the following language in the act organizing the Territory of Wisconsin:

"That the inhabitants of the said Territory shall be entitled to and enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States northwest of the river Ohio by the articles of compact contained in the ordinance for the government of the said territory, passed the 13th day of July, 1787; and *shall be subject to all the* CONDITIONS, RESTRICTIONS, and PROHIBITIONS in said articles of compact *imposed* on the people of the said territory."

Thus, Mr. Chairman, we have shown that all the legislation of the country, from the first session of Congress under the Constitution, down to 1836, in reference to the Northwest Territory, embracing its division and subdivisions, until every part was clothed with sovereign power as independent States, recognized the existence of this ordinance and enforced its provisions.

Permit me now to call the attention of the committee to the views entertained and ably expressed by a very distinguished gentleman from Georgia, [Mr. TOOMBS,] who, it appears, entertains a different opinion from that expressed by the President and his legal advisor. In a lecture delivered by this gentleman in Boston on the 26th of January last, he says:

"That ordinance was adopted on the 13th day of July, 1787, before the adoption of the Constitution. It purported on its face to be a perpetual compact between the State of Virginia, the people of that Territory, and the then Government of the United States. It was unalterable except by the consent of all the parties; when Congress met for the first time under the new Government on the 4th day of March, 1789, it found the government established by virtue of this ordinance in actual operation; and on the 7th of August, 1789, it passed an act making the offices of Governor and Secretary in the Territory conform to the Federal Constitution. It did nothing more; it made no reference to, it took no action upon, the sixth and last section of the ordinance, which prohibited slavery. The division of that Territory was provided for in the ordinance; at each division the whole of the ordinance was assigned to each of its parts."

And this opinion he has recently expressed more fully in the Senate; and while I differ with him in his conclusions drawn from the facts thus ably presented, I fully agree with him that the ordinance retained all its vitality after the adoption of the Constitution, and was "unalterable, except by the consent of all the parties."

Now let us take another view of this question, and, for the sake of argument, suppose that the President and his Attorney are right. Then, I ask, what was there to prevent the introduction of slavery into the Northwest Territory? We have shown before, that the Legislative Council, with many of the citizens of Indiana, desired it, yet they did not introduce it. Slaveholders did not go there. And why? What insuperable barrier existed to prevent them from gratifying their desire and carrying out their wish? If the citizens of the Territories have the right *now* to regulate their "own domestic institutions," independent of Congress, surely they had the same right and power *then*.

What impassable gulf was there to prevent the citizens of Virginia and Kentucky from taking possession of the soil, and cultivating it by "servile labor?" Were they deterred by the lifeless carcass of an "extinguished" ordinance? Such an idea would not be a very high compliment to the "brave hunters of Kentucky," or the bold and fearless pioneers of the western forests. If it was not this, what was it? Slavery was prohibited—but how? I answer, that it was either by a recognition, on the part of all the people, of the existing, binding force of all the provisions of the ordinance itself, or by direct intervention on the part of Congress under the Constitution, in its various enactments for the organization of territorial governments. If it was the latter, then it follows that Congress recognized the power to legislate on the subject of slavery in the Territories, which they uniformly continued to do until every part of the territory was organized and admitted into the Union as sovereign, independent States. If it was the former, then all subsequent legislation was designed simply to recognize and enforce the ordinance according to its true and original intent and meaning. My view of the whole question is, that the ordinance continued to exist, and possessed vitality in itself, as fully and completely after the adoption of the Constitution as before its adoption; and that Congress possessed the power to enforce it—a power not derived from the ordinance, but from the Constitution. And further: that the same power which enforced the sixth article of the ordinance in one part of our Territory, can also extend it to any and every other Territory of the United States.

Mr. Chairman, having said all that I conceive it necessary now to say in reference to the Northwest Territory, I leave it to the committee and the country to determine whether the facts presented do not fully sustain the conclusion to which I have come, in opposition to the views of the President; also, the additional conclusion, that Congress has not only recognized, but uniformly exercised, the power to prohibit the introduction of slavery into the Territories.

In reference to the decisions of the Supreme Court, alluded to by the Attorney General, I shall take great pleasure in examining them when they are presented.

I now desire to call the attention of the committee, very briefly, to some of the subsequent acquisitions of Territory by the United States, and the action of Congress in reference to them, for the purpose of showing a further recognition of the power of prohibition.

In 1790 that portion of country now comprising the State of Tennessee was ceded to the United States by the State of North Carolina. At the close of the fifth condition in the deed of cession is the following proviso:

"*Provided always*, That no regulations made, or to be made, by Congress shall tend to emancipate slaves."

Now, the question which naturally arises here is, if Congress had never "made" any regulations to prohibit slavery, and if it possessed no power to make such regulations, why did North Carolina make this condition in her deed of

cession? The answer is, that she recognized the power, and knew that the principles of the United States Government were hostile to the extension of slavery; and that the power would probably be exercised in this case; therefore, she determined to restrain it by express and positive stipulations. And Congress by accepting this condition did not surrender or disavow its power, but on the grounds of expediency yielded to the request of North Carolina; and the Representatives of the free States, always recognizing the binding force of solemn compacts between sovereign States and the United States, subsequently carried it out in good faith in the territorial organization of Tennessee.

The act of Congress, approved March 26, 1804, for the government of the Territory of Orleans, shows in a very especial manner the deep solicitude of Congress to prohibit the extension of slavery, and its abhorrence of the slave trade. The tenth section declares as follows:

"It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place *without* the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves." * * * "It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place *within* the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves, which shall have been imported since the 1st day of May, 1798, into any port or place within the limits of the United States, or which may hereafter be so imported, from any place without the limits of the United States." * * * * "And no slave or slaves shall, directly or indirectly, be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves."

This act prohibits the importation of slaves from without the United States, the migration from the States of such slaves as had been imported into any of the States after the 1st of May, 1798, and restricts the migration of such slaves as had been born in the United States to the *bona fide* owners, and to the actual settlers of the Territory. And this law provides for the freedom of slaves that should be brought into the Territory in violation of its provisions, and imposes a heavy penalty on all who should violate it.

It will be observed that this law is retrospective, and embraces a class of persons who had been in the United States nearly six years, and were in the possession of citizens of the various States, and were held under the laws of the State where they resided as property; and yet, while Congress says, impliedly, you may hold them as such in the States, you shall not take them into this Territory.

Here we have a most striking instance of congressional interference and prohibition, not only of "importation" from *without*, but of "migration" *within*, the United States. My conclusion, therefore, is, that the same power which prohibited the introduction into the Territories of imported slaves, can also prohibit the migration into the same Territories of those born in the United States.

Mr. Chairman, I am deeply sensible of the importance and delicacy of this whole question; and feeling a deep solicitude for the welfare of my country, I am not indifferent to the feelings excited, and the sensations produced, by its discussion. But as the question is forced upon us by the President, it must be met; and we owe it to every part of the country to meet it fairly, openly, and firmly. And while I would not utter a word, or indulge a feeling detrimental to the constitutional rights and privileges of any portion of the inhabitants of any section of the Union, yet, with my understanding of the purposes and designs of the framers of our Government, and guided by the example and precedents of the fathers of the Republic, I take my stand firmly and unwaveringly on the broad ground of constitutional opposition to the extension of slavery; and having witnessed the benign influences and happy effects of the ordinance of '87 on the happiness and prosperity, intelligence and virtue, of the citizens of the States formed from the Territories to which it was originally applied, I shall, on all occasions, give my influence and voice in favor of its extension in form or substance to all our Territories, and thus secure a free soil to be cultivated by free men, according to the principles of the Declaration of Independence, the Constitution of the Government, the legislation of the country, and the designs of the fathers of our glorious Republic.

Mr. Chairman, there is another phase of the general question of slavery, not directly embraced in the message now before the committee, which I propose to discuss at some future time. It is what is so frequently spoken of as the nationality of slavery. This claim to nationality is based on what is recognized as the universal law of property. The argument is, that, inasmuch as a citizen of Georgia has a right to carry his property such as horses, sheep, and oxen, his farming utensils, and household goods, into any State in the Union, and claim the protection of the laws, so he has the same right to take his slaves into any State, hold them at pleasure, and claim the aid of the law for his protection. The effect of this policy would be to carry slavery into every State of this Union, and to subvert and destroy the whole machinery of our free institutions. Are those who advocate this principle aware of one consequence which would follow from its establishment? and are they prepared to meet it? The power and jurisdiction of the national Legislature extend to all national questions. Make slavery national, and you bring it within that jurisdiction; and Congress must take cognizance of it wherever it exists, and *may* legislate in reference to it, according to their own will and pleasure. And the adoption of this policy would be destructive of the well-established and universally-recognized principle, that Congress possesses no power to interfere with, or legislate on, the subject, as it now exists, sectionally, in a portion of the States of this Union.

I have thus merely stated the question, and shall hold myself in readiness to meet it at any future time.